

CUSTOMER NO.
34456**REMARKS**

With respect to paragraph 1 of the Office Action, the specification has been objected to as failing to provide proper antecedent basis for the claimed subject matter of "computer readable medium." Applicants traverse this objection, as paragraph 61 of the specification provides antecedent basis for claiming "computer readable medium." Withdraw this rejection is respectfully requested.

Regarding the rejection of claim 24 under 35 U.S.C. § 112, in paragraphs 2 and 3 of the Office Action, claim 24 has been amended to overcome this rejection. Claim 24 now recites, a computer-readable medium having computer-readable data tangibly embodying a program of instructions to manipulate a processor to, receive, determine, etc. Applicants submit that paragraph 61 of the subject application fully supports amended claim 24 and that the description in the specification provides the interrelationships of hardware and software to allow one having skill in the art to make and use the invention as claimed in accordance with the requirements of § 112.

Regarding the rejection of claim 24 under 35 U.S.C. § 101, on page 3 of the Office Action, Applicants respectfully disagree that the scope of the term "medium" is not clearly conveyed such that claim 24 is directed to non-statutory subject matter. Applicants submit that paragraph 61 of the subject application provides antecedent basis and clearly conveys the scope of the term medium and provides the interrelationships between hardware and software to constitute statutory subject. Specifically, in paragraph 61 Applicants recite;

"Many of the above techniques described may be provided by a computing device executing one or more software applications or engines. The software may be executing on a single computing platform or more than one.".... "The platforms may execute commands maintained in a computer readable medium." (Emphasis added) Applicants respectfully submit that claim 24 is allowable and requests that all rejections of claim 24 be withdrawn.

Claims 1, 2, 4-7, 9-11, 14-16, and 22-24 stand rejected under 35 U.S.C. § 102(e) over Swart et al (US Patent Application No. 2003/0028890) "Swart." Applicant respectfully traverses. Independent claims 1, 16, and 24 now recite a "point to point protocol

CUSTOMER NO.
34456

communication link.” Swart fails to teach or suggest a point-to-point protocol communication link between a video content source and a user device or a requesting device. The Office Action cites Swart as disclosing a point-to-point microwave link at paragraph 0101. A point-to-point microwave link is quite different from and cannot anticipate a point-to-point protocol (“PPP”) communication link.

A PPP link is defined by the Official Internet Protocol Standards (“OIPS”) and the IETF. A PPP link is not the same as a point-to-point link. A PPP link is established in a specified manner on top of a mere point-to-point physical link like the one disclosed in Swart. Once established, a PPP link allows, for example, the transport of multi-protocol datagrams. OIPS standard 51 (“STD 51”) defines the structure and operation of a PPP link. A corresponding request for comments for STD 51 is RFC 1661.

In contrast, the point-to-point microwave link of Swart is the type of physical link on top of which a PPP link may be established. To be rejected under 35 U.S.C. § 102 each element of Applicants’ claims must be found in the prior art reference. Swart does not teach or suggest a point-to-point protocol link coupling a source to a user, and therefore reconsideration and withdrawal of the § 102 rejection of claims 1, 16, and 24 is respectfully requested. Independent claims 1, 16, and 24 are now in condition for allowance and Applicants request that claims 1, 16, and 24 advance to allowance.

Regarding the rejection of dependent claims 2, 4-7, 9-11, 14-15, under 35 U.S.C. § 102 (e) on page 4 of the Office Action, these claims depend from claim 1 and since amended claim 1 is now allowable, it follows that claims 2, 4-7, 9-11, 14-15 are now in condition for allowance. Applicants respectfully requests that the rejection of claims 2, 4-7, 9-11, 14-15 be reconsidered, and withdraw of the rejection is respectfully requested.

Regarding the rejection of claims 22 and 23 under 35 U.S.C. § 102 (e) on page 4 of the office action, these claims depend from claim 16, and since claim 16 is now allowable, it follows that claims 22 and 23 are now in condition for allowance. Withdrawal of the § 102 rejection of claims 22 and 23 is respectfully requested.

CUSTOMER NO.
34456

Regarding the rejection of claims 3, 8, 12, 13, and 17-21 under 35 U.S.C. § 103(a) over Swart et al. (a single reference) on page 6 paragraph 6 of the Office Action, Applicants respectfully requests that this rejection be reconsidered. In rejecting claims 3, 8, 12, 13, and 17-21 the Examiner has failed to establish a *prima facie* obviousness rejection. Regarding claim 3, the USPTO has failed to cite references that, when combined, have the requisite elements to establish a *prima facie* 35 U.S.C. § 103 (a) rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. One of the basic criteria is that the prior art references, when combined, must teach or suggest all of the claim limitations. Another basic criteria is that the teaching or suggestion to make the claimed invention by combining and the reasonable expectation of success must both be found in the prior art. *In re Vaeck*, MPEP 706.02, 947 F.2d 1438, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

The Office Action fails to meet this burden. For example, and as pointed out above, the § 103 reference fails to teach or disclose all limitations.

In claim 12, Applicants recites a pre-payment engine to inform a user of a cost. Swart does not teach or suggest a prepayment engine as is claimed by Applicants.

In claim 13, Applicants recites a short range wireless communication, a point to point protocol over ATM and a point to point over Ethernet communication. Swart does not teach or suggest these forms of communication as is claimed by Applicants.

In claim 17, Applicants recite notifying a user of a cost associated with accessing a video content source prior to forming the communication link. Swart does not teach or suggest notifying a user of costs prior to establishing a communication link as in claimed by Applicants.

In claim 19, Applicants recites notifying a user of a cost, and communicatively coupling the user with a video source with one of a point to point protocol over Ethernet or a point to point

CUSTOMER NO.
34456

over ATM link. Swart does not teach or suggest such a point-to-point protocol system as is claimed by Applicants.

In claim 20, Applicants recites tracking information throughput, tracking quality of service, and tracking peak bandwidth. Swart does not teach or suggest such a tracking system as in claimed by Applicants

In claim 21 Applicants recites converting a variable bit stream into a constant bit rate stream. Swart does not teach or suggest such a system as in claimed by Applicants

Claims 3, 8, 12, 13, and 17-21 are neither taught nor suggested by Swart and stating in the Office Action that the subject matter of the claims would have been obvious to one having skill in the art is totally unsupported and unsubstantiated. If the Examiner seeks to rely on some form of Official Notice, the Examiner must produce a reference showing the element and a teaching to combine. Further, since claims 3, 8, 12, 13, and 17-21 depend from independent and allowable claims 1 and 16, it follows that claims 3, 8, 12, 13, and 17-21 are now in condition for allowance.

Applicants respectfully submit that the present application is now in condition for allowance. Accordingly, the Examiner is requested to issue a Notice of Allowance for all pending claims. Should the Examiner deem that any further action by the Applicants would be desirable for placing this application in even better condition for issue, a call to the Applicants' representative listed below is requested. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney or agent.


CUSTOMER NO.
34456

CONCLUSION

Applicants do not believe that any additional fees are due, but if the Commissioner believes additional fees are due, the Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

9/28/05
Date


Russell W. White, Reg. No. 45,691
Attorney for Applicants
TOLER, LARSON & ABEL, L.L.P.
5000 Plaza On The Lake, Suite 265
Austin, Texas 78746
(512) 327-5515 (phone)
(512) 327-5452 (fax)